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19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**

21 YITZCHOK FRANKEL *et al.*,
22 Plaintiffs,
23 v.
24 REGENTS OF THE UNIVERSITY
25 OF CALIFORNIA *et al.*,
26 Defendants.

Case No.: 2:24-cv-04702

**PLAINTIFFS’
MEMORANDUM IN
SUPPORT OF MOTION FOR
PARTIAL SUMMARY
JUDGMENT AND
PERMANENT INJUNCTION**

Judge: Hon. Mark C. Scarsi
Hearing: May 12, 2025, 9:00 a.m.
Courtroom: 7C

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INTRODUCTION

In August, this Court issued a preliminary injunction holding that the blatant discrimination against Jews on UCLA’s campus—something “UCLA d[id] not dispute”—was “so abhorrent” and “so unimaginable” that it warranted immediate relief under the Free Exercise Clause. Preliminary Injunction Order, Dkt.89 at 2. At a time when Jews around the country were under attack, this Court stepped in to vindicate the constitutional rights of a discrete and persecuted religious minority. And it did so on the basis of a “materially undisputed” factual record. Dkt.89 at 3.

In the six months since, this case has only gotten easier. Over the summer, UCLA did not dispute that “Jewish students were excluded from portions of the UCLA campus because they refused to denounce their faith,” Dkt.89 at 2, and conceded that students were “physically blocked from accessing parts of the campus,” “put[ting] many on our campus, especially our Jewish students, in a state of anxiety and fear,” Statement of Uncontroverted Facts (“SUF”) ¶81. Since then, UCLA has admitted even more facts that amply show its liability for discrimination.

Start with the report issued by UCLA’s own Task Force to Combat Antisemitism and Anti-Israeli Bias, which found (among many other things) that UCLA facilitated the rise of antisemitic checkpoints in which “students” who “w[ore] a Star of David or a kippah” or “refus[ed] to denounce” Israel “were physically blocked.” 3d Rassbach Decl. Ex. 1 at 61-62¹; *see also* SUF ¶45. Or take the November 2024 findings of UCLA’s

¹ Each pincite to an exhibit in this memorandum is to the page number added to the bottom of each page of the exhibit pursuant to L.R. 11-5.2, and not (as applicable) to the document’s original page number.

1 independent investigator, 21st Century Policing Solutions, which
2 concluded that UCLA had “instructed” the campus police “to remain
3 wholly unseen by protesters” and had accommodated “[e]ncampment
4 members” who “made clear throughout the encampment period they did
5 not want to engage with police or to see police in or around the
6 encampment.” 3d Rassbach Decl. Ex. 2 at 112; *see also* SUF ¶¶73-74.

7 UCLA admits many of the critical facts in its filings in this Court.
8 UCLA concedes that “since October 7, 2023, disturbing antisemitic
9 language was used and imagery was present at protests that occurred on
10 UCLA’s campus,” including during “the encampment at Royce Quad.”
11 Dkt.107 ¶¶75, 117 (“Answer”). UCLA admits that the activists “limited
12 access to the encampment”—in violation of UCLA policies that purported
13 “not” to “allow unauthorized protestors to exercise exclusive control over
14 campus facilities or spaces.” *Id.* ¶¶71, 128. Yet UCLA responded not by
15 shutting down the encampment, but by “barricading” it through “ha[ving]
16 metal bike racks installed around the encampment,” “station[ing]”
17 private “security staff” “near the encampment,” and “instruct[ing]” them
18 “to prevent anyone from accessing ‘neutral zones’” near “the
19 encampment.” Dkt.123 at 7 (Defendants’ Reply ISO Mot. for Judgment
20 on the Pleadings); Answer ¶¶11-12.

21 This all comes from UCLA’s own mouth. And although the university
22 continues to claim that it is not to blame for the discrimination it has let
23 run rampant on its campus, its objections have become more half-
24 hearted. It dropped its ill-advised appeal of this Court’s preliminary
25 injunction, Dkt.95, entered into an agreement with the United States
26 Department of Education Office for Civil Rights to remediate its

1 behavior, 3d Rassbach Decl. Exs. 5-6, and issued public reports that
2 found that UCLA was at fault for failing to protect its students' and
3 faculty members' constitutional rights, 3d Rassbach Decl. Exs. 1-2.
4 Indeed, UCLA's main report and investigation condemned its own
5 behavior as "de facto or structural antisemitism" and "fail[ing] in its legal
6 obligation to protect First Amendment rights to the free exercise of
7 religion." SUF ¶¶49-50.

8 Given these undisputed facts, summary judgment is appropriate on
9 Plaintiffs' free exercise claims. This Court's preliminary injunction
10 forbids UCLA "from offering any ordinarily available programs,
11 activities, or campus areas to students if Defendants know" that they "are
12 not fully and equally accessible to Jewish students." Dkt.89 at 15. That
13 injunction should now be made permanent by granting partial summary
14 judgment on Counts III, IV, and V of the First Amended Complaint.

15 **FACTUAL BACKGROUND**

16 **A. UCLA and its Policies**

17 UCLA houses, teaches, and serves roughly 46,000 students, including
18 a large Jewish population. SUF ¶¶15, 18. The school's policies aim to
19 "create and maintain a safe, supportive, and inclusive campus
20 community" for all. SUF ¶19. Among them are rules, in place at UCLA
21 for many years, regulating the time, place, and manner of public protests.
22 SUF ¶¶20-23. For instance, protesters may not "block entrances to or
23 otherwise interfere with the free flow of traffic into and out of campus
24 buildings." SUF ¶22. Nor may they "intimidat[e], harass[], or obstruct[]
25 any University employee, student, or any other person," or "camp or
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27

lodge, except in authorized facilities or locations.” SUF ¶22.² UCLA’s ostensible goal is to protect students and faculty from discrimination and harassment. SUF ¶25.

B. Antisemitism at UCLA after the October 7 attack

When antisemitism burst forth on UCLA’s campus after the October 7 attack, UCLA failed utterly to meet its claimed goals of protecting students and faculty from discrimination. SUF ¶¶26-107. Over the months that followed, antisemitic demonstrations became routine on campus, including chants of “kill the Jews,” “from the river to the sea, Palestine will be free,” and “Intifada.” SUF ¶¶26-28. In one especially egregious demonstration, activists chanted “beat that fucking Jew” while bashing an effigy of Israeli Prime Minister Benjamin Netanyahu. SUF ¶32.

Swastikas dotted UCLA’s campus, intimidating and terrorizing Jewish students and faculty. SUF ¶29. Activists chalked Stars of David onto UCLA’s sidewalks alongside directions to “Step Here.” SUF ¶31. In one incident, an individual placed on campus a disturbing antisemitic statue, which depicted a large pig holding a bag of money and a birdcage with a keffiyeh, alongside a bucket painted with a star of David. SUF ¶30.

All of that was only the beginning. As anti-Israel encampments began cropping up around the country in April 2024, UCLA quickly—and unsurprisingly—followed suit. SUF ¶¶33-34. On April 25, 2024, a group of activists “established” what then-Chancellor Block described as “an

² UCLA updated these policies in September 2024. SUF ¶23. The new policies contain similar restrictions. SUF ¶23.

1 unauthorized physical encampment on part of Royce Quad,” SUF ¶34, a
2 key thoroughfare used by students to traverse campus and gather
3 socially and directly adjacent to critical educational buildings, including
4 Powell Library and Royce Hall, SUF ¶¶35-38.

5 To maintain the encampment, activists established a perimeter with
6 plywood and metal barriers. SUF ¶42. Inside the encampment,
7 antisemitic demonstrations were frequent, with activists chanting
8 antisemitic slogans and displaying antisemitic imagery on signs and
9 graffiti. SUF ¶¶40-41. Violence was also commonplace. SUF ¶¶43, 78-79.

10 Exclusion was the point all along. In particular, activists established
11 checkpoints, creating what was effectively a Jew Exclusion Zone, where
12 they used human phalanxes to block persons from entering Royce Quad
13 and critical campus facilities if they refused to denounce Israel or wore
14 visibly Jewish garb, such as a Star of David or a kippah. SUF ¶¶44-46.
15 As UCLA’s Task Force to Combat Antisemitism concluded, these actions
16 “denied Jews and others free passage and access to campus classrooms
17 and facilities” and “resulted in Jews and others who would not renounce
18 the State of Israel being hindered in their efforts to freely and fully avail
19 themselves of campus offerings.” SUF ¶46. And “after social media posts
20 about Jewish students being excluded from portions of campus went
21 viral, administrators were inundated with complaints ... about why the
22 University was allowing it to continue.” SUF ¶47.

23 “From the beginning,” it was “obvious to many campus leaders that
24 the encampment ... presented a clear and present danger to Jewish
25 students.” SUF ¶57. Yet rather than dismantle it, UCLA took several
26 actions that supported it. The same day it arose, UCLA “barricad[ed the]

1 campus encampment” by directing the installation of metal bike racks
2 around it, installing more two days later. Dkt.123 at 7; *see* SUF ¶¶42, 59.
3 It hired “CSC security teams,” which it placed on the outskirts of the
4 encampment along with other “campus security.” SUF ¶¶63, 68. UCLA
5 directed these security staff “to prevent anyone from accessing” so-called
6 “neutral zones” located to the immediate east and west of the location of
7 the encampment on Royce Quad. SUF ¶¶69-70. UCLA also deployed
8 “student affairs representatives” to inform people “about the
9 encampment, redirect them if desired[,] and to serve as a resource for
10 their needs.” SUF ¶67. Although Defendants’ security staff purported to
11 prevent anyone from getting through the neutral zones, SUF ¶¶69-70,
12 the encampment grew significantly throughout the week of its existence.
13 SUF ¶39. Faculty held classes from within the encampment and, as
14 UCLA’s Task Force described it, they “participat[ed] in the encampment
15 activities including denial of campus access to Jews and those supporting
16 Israel.” SUF ¶¶52-53. UCLA even turned off the sprinklers on Royce
17 Quad so the activists could stay dry. SUF ¶60.

18 Despite acknowledging that the encampment was “unauthorized,”
19 SUF ¶¶34, 81, UCLA directed the UCLA PD not to intervene, overruling
20 the UCLA PD Chief’s “advi[ce]” “from the beginning” that UCLA should
21 not “allow the encampment” to stand. SUF ¶¶71, 102. UCLA
22 accommodated “[e]ncampment members” who “did not want to engage
23 with police or to see police in or around the encampment.” SUF ¶73.
24 Indeed, UCLA repeatedly informed students that “University of
25 California systemwide policy guidance”—i.e., a report commonly referred
26 to as the Robinson-Edley report—requires the school “not to request law
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1 enforcement involvement preemptively,” but “only if absolutely
2 necessary to protect the physical safety of our campus community.” SUF
3 ¶¶76-77.

4 As the week wore on, the encampment remained—even after UCLA
5 knew that it had blocked Jewish students and faculty from accessing key
6 parts of campus and had led to violence. SUF ¶¶44-49, 81, 104. Physical
7 altercations broke out, including one incident where the “child of a
8 Holocaust survivor” was “pepper sprayed by encampment participants”
9 and “a Jewish student” was “thrown to the ground by members of the
10 encampment and repeatedly kicked in the head.” SUF ¶¶78-79. By April
11 30, Chancellor Block was forced to acknowledge that the “unauthorized
12 physical encampment” had led to “shocking and shameful” “tactics,”
13 including “instances of violence completely at odds with our values” and
14 “students on their way to class [being] physically blocked from accessing
15 parts of the campus.” SUF ¶81. “These incidents,” Block stressed, “put
16 many on our campus, especially our Jewish students, in a state of anxiety
17 and fear.” SUF ¶81. Campus-wide alerts sent out by UCLA reiterated
18 that the encampment was impeding access to Royce Quad. SUF ¶¶82-85.
19 But instead of announcing plans to remove that impediment, UCLA
20 promised only to “continue to ensure people on campus know about the
21 demonstration so they can avoid the area if they wish.” SUF ¶85.

22 Predictably, a violent confrontation eventually arose between the
23 encampment activists and counter-protesters. SUF ¶90. At that point—
24 on April 30—UCLA finally allowed UCLA PD and LAPD to intervene.
25 SUF ¶91. But the police merely worked to end the confrontation, while
26 UCLA again allowed the encampment to otherwise remain in place. SUF
27

¶92. In response to the conflict, Chancellor Block sent a campus-wide email condemning not the encampment and the exclusion it bred, but rather the “attack [on] the encampment that has been established ... to advocate for Palestinian rights.” SUF ¶93. While Block promised “a thorough investigation” into “the attack [on] the encampment,” he promised no similar investigation into the encampment’s exclusionary tactics. SUF ¶93. Instead, UCLA continued to facilitate the encampment, announcing that classes would be canceled on May 1 and held remotely on May 2 and 3. SUF ¶¶95-97.

It was only early on the morning of May 2, 2024, that UCLA finally “made the decision to direct UCPD and outside law enforcement officers to enter and clear” the encampment. SUF ¶98. In another message to the campus explaining this decision, Chancellor Block acknowledged that “the encampment on Royce Quad was both unlawful and a breach of policy,” which his administration had “allowed” “to remain in place,” resulting in “[d]emonstrators directly interfer[ing] with instruction by blocking students’ pathways to classrooms.” SUF ¶99. All told, the encampment obstructed access to UCLA’s campus for a week before it was finally dismantled. SUF ¶¶34, 98. But despite the administration’s acknowledgment that the encampment violated university policies, SUF ¶99, “[n]o UCLA students were disciplined for blocking Jewish students from accessing public areas of UCLA’s campus during the encampment,” SUF ¶107.

C. Antisemitic lawlessness continues after the encampment’s end.

The initial encampment was only the beginning of the activists’ resolve. Since its demise, anti-Israel activists have repeatedly disrupted

1 campus, occupied facilities, and installed new encampments. SUF ¶¶108-
2 31 (describing several instances).

3 On May 6, 2024, less than a week after the end of the initial
4 encampment, a large group of activists unlawfully occupied Moore Hall
5 in the early morning. SUF ¶110. After being told to leave eight different
6 times, the activists finally marched to and entered Dodd Hall, where they
7 created a disturbance and interrupted midterm exams. SUF ¶¶111-12.
8 In response to these disturbances, UCLA required classes to be held
9 remotely from May 6 to May 10, 2024. SUF ¶114.

10 A couple of weeks later, on May 23, the activists established a new
11 encampment on Kerckhoff Patio, where they “erect[ed] barricades,”
12 “establish[ed] fortifications,” and “block[ed] access to the area and nearby
13 buildings” and “disrupt[ed] regular campus operations.” SUF ¶116. After
14 being told to “disperse,” the activists relocated to another building, again
15 “barricad[ing] access” and “committ[ing] acts of vandalism.” SUF ¶117.
16 Only after all this, and another request to “disperse,” did law enforcement
17 move in. SUF ¶118.

18 Just over two weeks later, on June 10, activists set up “unlawful
19 encampments” at “three locations”: first near the Janss Steps, where they
20 “restricted access to the general public” and “disrupted nearby final
21 exams”; then on the Kerckhoff Patio, where they again “restricted access”
22 and “disrupted nearby final exams”; and finally in “the courtyard
23 between Dodd Hall and the School of Law,” where they once more
24 “restricted access to the general public” and “disrupted nearby final
25 exams.” SUF ¶¶119-23. UCLA acknowledged that students were
26 “block[ed]” from “access[ing] parts of campus,” including some who
27

1 “miss[ed] finals” and others who were “evacuated in the middle of” their
2 exams. SUF ¶124.

3 Chaos has continued in the 2024-2025 school year. SUF ¶¶126-31.
4 Indeed, Defendants themselves have been affected by the chaotic
5 conditions they have facilitated—on September 19, 2024, activists
6 disrupted a meeting of the Defendant Regents of the University of
7 California. SUF ¶127. Shortly thereafter, on the anniversary of Hamas’s
8 terrorist attacks in Israel, UCLA’s Cultural Affairs Commission, which
9 is part of the university and funded by mandatory student fees, “posted
10 a series of images and statements” depicting hateful symbols that
11 “celebrate[d] overt violence against Israeli civilians.” SUF ¶128. The
12 same day, UCLA’s chapter of “Students for Justice in Palestine[]
13 organized and held a demonstration in North Di[cks]on Court”
14 commemorating the terrorist attacks, all “in violation of campus time,
15 place, and manner restrictions[] and other campus and University rules.”
16 SUF ¶129.

17 The ongoing unrest has also resulted in yet more encampments and
18 blockades in recent months. On October 21, 2024, another “unauthorized
19 demonstration” afflicted UCLA’s campus when activists set up
20 “unauthorized structures” in Dickson Court North; they finally dispersed
21 after orders from the police. SUF ¶130. Not a month later, a large crowd
22 of activists “block[ed] pedestrian access on Bruin Walk,” “the main
23 pedestrian thoroughfare on campus,” by “form[ing] a human chain” with
24 their “arms” “link[ed] ... together.” SUF ¶131. Law enforcement
25 eventually cleared this blockade. SUF ¶131.

D. Plaintiffs’ religious beliefs do not allow condemning Israel.

Plaintiffs are three Jewish UCLA students and one professor. *SUF* ¶¶132-49. Like “a large majority of Jews,” each Plaintiff’s faith prevents him or her from denouncing Israel. *SUF* ¶¶134-35, 138, 141-42, 148-49. Law student Yitzchok Frankel seeks to follow Jewish law, which prohibits speaking ill of or defaming the land of Israel, and so he believes, as a matter of his religious faith, that he must support Israel. *SUF* ¶¶134-35. So too, junior Joshua Ghayoum believes that support for Israel is his religious obligation, and thus he cannot in good conscience forswear Israel and its right to exist. *SUF* ¶138. Similarly, for law student Eden Shemuelian, Judaism is synonymous with supporting Israel, and being a faithful Jew means supporting Israel’s right to exist, so she cannot disavow her beliefs about Israel. *SUF* ¶141. And finally, for Associate Clinical Professor Kamran Shamsa, his Jewish faith requires that he support Israel as a homeland for Jews, and he cannot forswear Israel. *SUF* ¶147.

E. This lawsuit

In June 2024, Plaintiffs Frankel, Ghayoum, and Shemuelian filed this lawsuit, alleging that UCLA and its agents have violated their rights to free speech, free exercise, and equal protection; Title VI of the Civil Rights Act of 1964; the Ku Klux Klan Act of 1871; and a host of California state-law constitutional and statutory rights. *Dkt.1* ¶¶320-430 (original complaint); *see also* *Dkt.101* ¶¶441-567 (First Amended Complaint).

Shortly after filing suit, Plaintiffs requested a preliminary injunction to protect their rights during the pendency of this lawsuit. *Dkt.48*. Defendants defended against the request on the ground that UCLA was

1 not responsible for the illegal encampment and the unlawful conduct
2 directed at Jewish students and faculty. Dkt.62.

3 This Court disagreed and granted a preliminary injunction. Dkt.89 at
4 15-16. In doing so, the Court found that Jews on UCLA's campus had
5 been treated "unimaginabl[y]" and "abhorrent[ly]" during the 2023-24
6 academic year. *Id.* at 2. And it concluded that Plaintiffs were likely to
7 succeed on, at a minimum, their free exercise claims, noting that
8 Defendants operated "programs, activities, and campus areas" despite
9 knowing that Plaintiffs and other Jews "were excluded because of their
10 genuinely held religious beliefs." *Id.* at 11-12.

11 Plaintiffs then filed a First Amended Complaint, which added as a
12 plaintiff Dr. Kamran Shamsa, a cardiologist in UCLA's medical school.
13 Dkt.101 ¶46; SUF ¶144. All Defendants jointly filed an Answer, Dkt.107,
14 and all Defendants (except the Regents) moved for judgment on the
15 pleadings, Dkt.108-1. Plaintiffs now move for partial summary judgment
16 and a permanent injunction on their free exercise claims in Counts III,
17 IV, and V.³

18 LEGAL STANDARD

19 Summary judgment is warranted where there is no genuine dispute of
20 material fact and the moving party is entitled to judgment as a matter of
21 _____

22 ³ The Court may wish to consolidate the hearings for this motion and
23 the motion for judgment on the pleadings into a single hearing. Plaintiffs
24 also note that Julio Frenk became UCLA's new Chancellor on January 1,
25 2025, succeeding Defendant Block, and Steve Lurie became UCLA's new
26 Associate Vice Chancellor for Campus and Community Safety on
27 February 1, 2025, succeeding Defendant Braziel. Thus, Frenk and Lurie
are automatically substituted for the official-capacity claims against
Block and Braziel, respectively. *See* Fed. R. Civ. P. 25(d).

1 law. Fed. R. Civ. P. 56(a). A fact is material when, under relevant law,
2 the resolution of that fact affects the outcome of the case, and a dispute
3 is genuine only “if the evidence is such that a reasonable jury could return
4 a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477
5 U.S. 242, 248 (1986). Once the moving party satisfies its burden, the
6 nonmoving party cannot simply rest on the pleadings or assert that a
7 “metaphysical doubt” about a material factual issue precludes summary
8 judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S.
9 574, 586 (1986). Rather, “[t]he nonmoving party must come forward with
10 ‘specific facts showing that there is a genuine [dispute] for trial.’” *Id.* at
11 587 (cleaned up).

12 The standard for a permanent injunction is “essentially the same” as
13 for a preliminary injunction, except that Plaintiffs must show actual
14 success on the merits. *Flexible Lifeline Sys., Inc. v. Precision Lift, Inc.*,
15 654 F.3d 989, 996 (9th Cir. 2011) (quoting *Amoco Prod. Co. v. Gambell*,
16 480 U.S. 531, 546 n.12 (1987)). There is no heightened standard for
17 granting a mandatory permanent injunction. *Edmo v. Corizon, Inc.*, 935
18 F.3d 757, 784 n.13 (9th Cir. 2019).

19 ARGUMENT

20 **I. The undisputed facts show that Defendants violated the Free** 21 **Exercise Clause.**

22 Under the Free Exercise Clause, governmental policies “that burden
23 religious exercise must be both neutral and generally applicable.”
24 *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of*
25 *Educ.*, 82 F.4th 664, 685 (9th Cir. 2023) (en banc) (“FCA”). If they are not,
26 they are subject to strict scrutiny. *Id.*

1 To begin, policies are not neutral or generally applicable if they target
2 religious observers based on their religious status or religious exercise.
3 *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 458
4 (2017); *Carson v. Makin*, 596 U.S. 767, 787 (2022). Neither are policies
5 that “treat *any* comparable secular activity more favorably than religious
6 exercise.” *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam)
7 (emphasis in original). And finally, a policy is not generally applicable if
8 it “ha[s] ‘a mechanism for individualized exemptions.’” *FCA*, 82 F.4th at
9 686 (quoting *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021)).
10 That means “the mere existence of a discretionary mechanism to grant
11 exemptions can be sufficient to render a policy not generally applicable,
12 regardless of the actual exercise.” *Id.* at 687-88.

13 Here, Defendants actively facilitated the exclusion of students and
14 faculty based on their Jewish faith, which clearly burdened their
15 religious exercise. *Loffman v. California Dep’t of Educ.*, 119 F.4th 1147,
16 1166-67 (9th Cir. 2024). That triggers strict scrutiny three times over.

17 First, UCLA discriminated against Jews based on their religious
18 status. Second, UCLA treated Plaintiffs’ religious exercise worse than
19 comparable secular activities. And third, UCLA did not uniformly apply
20 its policies, and it retains—and in this case exercised—significant *ad hoc*
21 discretion in applying those policies.

22 Defendants’ actions must therefore satisfy strict scrutiny, “the most
23 demanding test known to constitutional law.” *City of Boerne v. Flores*,
24 521 U.S. 507, 534 (1997). They cannot. This Court should conclude once
25 again—and now with the benefit of an even more fulsome, and
26

1 undisputed, record—that Plaintiffs succeed on their Free Exercise Clause
2 claims and are entitled to injunctive relief.

3 **A. The undisputed facts demonstrate that Defendants**
4 **facilitated status-based religious discrimination (Count III).**

5 The Free Exercise Clause “protect[s] religious observers against
6 unequal treatment” and subjects government actions to strict scrutiny
7 when they “target the religious for ‘special disabilities’ based on their
8 ‘religious status’” or exercise. *Trinity Lutheran*, 582 U.S. at 458
9 (alteration in original)); see *Carson*, 596 U.S. at 787 (2022); Dkt.89 at 9.
10 One such unconstitutional “disability” arises when a state actor “excludes
11 religious observers from otherwise available public benefits.” *Carson*, 596
12 U.S. at 778; see *Espinoza v. Montana Dep’t of Revenue*, 591 U.S. 464, 484
13 (2020). And that is all the more true when the state intentionally
14 discriminates against one religion in particular. See *Fowler v. Rhode*
15 *Island*, 345 U.S. 67, 69 (1953) (First Amendment bars state from
16 discriminating among religions); *Larson v. Valente*, 456 U.S. 228, 244-46
17 (1982) (rooting this rule in both the Free Exercise Clause and the
18 Establishment Clause); see also *Sherbert v. Verner*, 374 U.S. 398, 406
19 (1963) (Free Exercise Clause forbade discriminating against Saturday
20 worshippers in favor of Sunday worshippers).

21 That principle was violated when UCLA decided to make its campus
22 accessible to others even as it knew it was inaccessible to Jews. Dkt.89 at
23 11-12. The critical facts supporting that conclusion were “materially
24 undisputed” even at the preliminary-injunction stage. *Id.* at 3. That is all
25 the more true now.

26 As UCLA admits, in the spring of 2024, activists established and
27 maintained an “unauthorized physical encampment” in one of the most

1 frequented areas of campus. SUF ¶¶34-36. From the beginning, this
2 encampment was “unlawful,” “against policy,” and “violated” UCLA’s
3 “time, place, and manner” rules. SUF ¶¶99, 103. Yet UCLA helped
4 establish the barriers around the encampment by installing metal bike
5 racks on multiple occasions—as UCLA puts it, the university itself
6 “barricad[ed the] campus encampment.” Dkt.123 at 7; *see* SUF ¶¶42, 59.
7 The activists “limited access to the encampment,” Answer ¶7, using
8 human phalanxes to block persons from Royce Quad and critical
9 educational buildings if they refused to denounce Israel or wore visibly
10 Jewish garb, such as a Star of David or a kippah. SUF ¶¶44-46. UCLA
11 ordered its police department not to intervene in the encampment, while
12 stationing private security staff around it with instructions to prevent
13 persons from entering “neutral zones” located to the immediate east and
14 west of its location on Royce Quad. SUF ¶¶69-74; *cf. Gartenberg v. Cooper*
15 *Union*, No. 24-cv-2669, 2025 WL 401109, at *18 (S.D.N.Y. Feb. 5, 2025)
16 (permitting Title VI claim against school that instructed police not “to
17 intervene” in antisemitic confrontation). Despite these instructions, the
18 encampment grew over time and faculty held classes within it. SUF
19 ¶¶39, 53.

20 Defendants did all of this, knowing that the encampment’s
21 exclusionary tactics prohibited Jews from accessing parts of campus.
22 SUF ¶¶44-50, 81, 104. Indeed, Jews were excluded precisely *because of*
23 their Jewish faith—had they worn garb associated with other religious
24 traditions (like a cross) and held different religious beliefs about Israel,
25 they could have passed through the checkpoints. SUF ¶¶44-46.
26 Defendants thus knowingly facilitated the “exclu[sion of] religious
27

1 observers from otherwise available public benefits” and “den[ied]” them
2 “benefit[s] based on [their] religious exercise”—and in so doing,
3 Defendants “violate[d] the Free Exercise Clause.” *Carson*, 596 U.S. at
4 778, 785.

5 **B. The undisputed facts demonstrate that Defendants’ policies**
6 **and practices treated Plaintiffs’ religious exercise worse**
7 **than comparable secular activities (Count IV).**

8 UCLA’s facilitation of discrimination also triggers strict scrutiny
9 because it treats “comparable secular activit[ies] more favorably than
10 religious exercise.” *Tandon*, 593 U.S. at 62; *see also FCA*, 82 F.4th at 685.

11 UCLA undisputedly burdened Plaintiffs’ religious exercise: supporting
12 Israel and its right to exist in its homeland. SUF ¶¶134-35, 138, 141-42,
13 148-49. Because UCLA required campus and outside police to cater to
14 activists, Plaintiffs could not fully access UCLA’s educational benefits
15 and facilities like everyone else unless they forwent these religious
16 exercises. *Trinity Lutheran*, 582 U.S. at 463. Indeed, as UCLA’s own Task
17 Force found, those who “w[ore] a Star of David or a kippah” were
18 “blocked.” SUF ¶45; *cf. Bray v. Alexandria Women’s Health Clinic*, 506
19 U.S. 263, 270 (1993) (“A tax on wearing yarmulkes is a tax on Jews.”).
20 These policies, which UCLA facilitated, put Jews on UCLA’s campus to
21 an impossible choice: suppress their religious exercise or surrender their
22 access to UCLA’s educational facilities and campus. *See Sherbert*, 374
23 U.S. at 406.

24 At the same time, UCLA imposed no similar burden on a comparable
25 secular activity: supporting any other country in the world. SUF ¶¶44-
26 49. By depriving those who engage in religious exercise of access to the
27 same educational facilities and benefits to which other students and
28

1 faculty retained full access, UCLA violated the *Tandon* principle. *See*
2 *Tandon*, 593 U.S. at 62; *FCA*, 82 F.4th at 694 (government cannot “treat
3 comparable secular groups more favorably”); *see also Bacon v. Woodward*,
4 104 F.4th 744, 751-52 (9th Cir. 2024).

5 **C. The undisputed facts demonstrate that Defendants possess**
6 **wide discretion, which they used to discriminate against**
7 **Plaintiffs’ religious exercise (Count V).**

8 UCLA’s policies and practices trigger strict scrutiny in still a third
9 undisputed way: by permitting “discretionary mechanism[s]” of
10 “individualized exemptions,” which makes them not generally applicable.
11 *FCA*, 82 F.4th at 686, 688 (quoting *Fulton*, 593 U.S. at 533). As UCLA
12 itself repeatedly emphasizes, the university retains “obviously broad
13 discretion” in choosing how to respond to campus demonstrations, even
14 ones that expressly and discriminatorily burden religious exercise. Tr. of
15 Preliminary Injunction Hearing at 21, Dkt.80; *see* SUF ¶¶44-49, 76-77;
16 *FCA*, 82 F.4th at 687 (“[Defendant] admits that it retains (and exercises)
17 significant discretion in applying exceptions to its own programs.”).
18 UCLA even seeks to dismiss some of Plaintiffs’ claims precisely *because*
19 *of* the discretion it asserts that it retains. *See* Dkt.108-1 at 27. Under
20 *Fulton*, the mere *existence* of this sort of discretion—no matter *whether*
21 or *how* it is even exercised—proves that a policy is not generally
22 applicable and thus triggers strict scrutiny. *See Fulton*, 593 U.S. at 537;
23 *FCA*, 82 F.4th at 685; *Bacon*, 104 F.4th at 751.

24 UCLA argues that it *has* acted according to a neutral and generally
25 applicable policy, the Robinson-Edley report. Dkt.108-1 at 23. But as
26 UCLA emphasizes, the Robinson-Edley report itself confers on UCLA the
27 “broad discretion” it has exercised in responding to campus unrest. SUF

1 ¶¶76-77. This sort of discretion, which “invites” the government to treat
2 secular interests with greater “solicitude” than religious ones, proves
3 that the Robinson-Edley report is *not* generally applicable and thus does
4 *not* allow UCLA to avoid strict scrutiny. *Fulton*, 593 U.S. at 537.

5 The picture gets even worse when examining how UCLA has actually
6 *exercised* its discretion (an analytical step that, again, this Court needn’t
7 even take to find that strict scrutiny applies, *see FCA*, 82 F.4th at 685).
8 Indeed, despite the encampment’s rampant discrimination against Jews,
9 the university repeatedly made the discretionary decision not to enforce
10 its policies prohibiting it, instead adopting a policy of providing access
11 and benefits to some students and faculty while denying those same
12 benefits to Jews. SUF ¶¶44-49, 81, 104; Dkt.89 at 11-12 (“UCLA made
13 available certain of its programs, activities, and campus areas when
14 certain students, including Plaintiffs, were excluded because of their
15 genuinely held religious beliefs.”). Simply put, even though UCLA’s
16 written policies called for the removal of the discriminatory encampment,
17 Defendants chose instead, as a matter of their self-described discretion,
18 to adopt a *de facto* policy of facilitating it. SUF ¶¶21-24, 42-49, 59-63, 67-
19 77, 81, 103-04. Indeed, UCLA ordered law enforcement to remove the
20 encampment only after the *activists* were attacked, SUF ¶¶90, 98,
21 despite “instances of violence” arising earlier that “put many on our
22 campus, especially our Jewish students, in a state of anxiety and fear,”
23 SUF ¶81. This sort of “case-by-case analysis” and “pattern of selective
24 enforcement” is “antithetical to a generally applicable policy.” *FCA*, 82
25 F.4th at 688-89.

1 UCLA tries to argue that it exercised its discretion in a benevolent
2 way: to protect the activists’ free speech rights and public safety. *See, e.g.*,
3 Dkt.62 at 1, 9, 20, 22; Dkt.108-1 at 25; SUF ¶¶61, 102. These arguments
4 failed once, *see* Dkt.89 at 12, and they should fail again. The intentional
5 and often violent exclusion of Jews from accessing part of campus is the
6 furthest thing from protected speech, as even UCLA itself has
7 acknowledged in deeming the encampment “unlawful” and a “breach of
8 policy.” SUF ¶99; *see also Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507,
9 543 (2022) (“[I]n no world may a government entity’s concerns about
10 phantom constitutional violations justify actual violations of an
11 individual’s First Amendment rights.”). And UCLA’s appeals to public
12 safety cannot be taken seriously, given its repeated acknowledgments of
13 the violence and chaos that the encampment bred. SUF ¶¶81, 96. In sum,
14 Defendants’ “alleged good intentions do not change the fact that” they
15 knowingly exercised their discretion to facilitate the encampment in
16 violation of UCLA’s written policies and at the expense of Jews’ access to
17 campus. *FCA*, 82 F.4th at 688; *see* Dkt.89 at 11-12.

18 **D. Defendants’ policies fail strict scrutiny.**

19 Any of the above arguments, standing alone, would be enough to
20 trigger strict scrutiny.⁴ And Defendants cannot come close to satisfying
21 that standard. To do so, Defendants must show that UCLA’s policies and
22 practices advance “interests of the highest order” and that they are
23 “narrowly tailored” to achieve that interest. *Church of the Lukumi*

24 _____
25 ⁴ UCLA has no strict scrutiny affirmative defense with respect to its
26 discrimination against religious beliefs “as such.” *Trinity Lutheran*, 582
27 U.S. at 466 n.4 (quoting *Lukumi*, 508 U.S. at 533) (citing *McDaniel v.*
Paty, 435 U.S. 618, 626 (1978) (plurality opinion)).

1 *Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). “Put
2 another way, so long as the government can achieve its interests in a
3 manner that does not burden religion, it must do so.” *Fulton*, 593 U.S.
4 at 541.

5 To justify their actions, Defendants have repeatedly pointed to a
6 generalized interest in “promoting ‘public safety and security.’” Dkt.108-
7 1 at 25; Dkt.62 at 17. But a governmental interest cannot be articulated
8 at such “a high level of generality”; rather, “the First Amendment
9 demands a more precise analysis.” *Fulton*, 593 U.S. at 541. Defendants
10 must show that their interest is compelling as to “the particular
11 claimant whose sincere exercise of religion is being substantially
12 burdened.” *Holt v. Hobbs*, 574 U.S. 352, 363 (2015). This they have not
13 done.

14 Nor have Defendants ever explained how their actions advanced
15 “public safety.” *See id.* at 363-64. Defendants were well aware that the
16 activists in the encampment engaged in illegal conduct against Jews,
17 including violently assaulting them and physically blocking them from
18 accessing portions of campus. SUF ¶¶44-50, 57, 78-79, 81, 104. And
19 UCLA not only refused to disband the encampment, which led directly
20 to the violent melee between encampment militants and counter-
21 protestors. SUF ¶¶90-94. Rather, UCLA actively facilitated the
22 encampment by “barricading [the] campus encampment,” directing the
23 installation of metal bike racks around it, and posting security guards
24 on the outskirts “to prevent anyone from accessing” so-called “neutral
25 zones” located to its east and west. Dkt.123 at 7; *see* SUF ¶¶42, 59, 63,
26 68-70. Those actions allowed the activists to persist in terrorizing and
27

1 excluding members of UCLA’s Jewish community. Thus, allowing
2 admittedly unlawful and violent actions predictably did not further
3 Defendants’ interest in public safety—it *hindered* it.

4 Nor can Defendants show that their actions were “the least restrictive
5 means” of furthering public safety. *Bacon*, 104 F.4th at 752. Defendants
6 had at their disposal a host of less restrictive and nondiscriminatory
7 alternatives to burdening Plaintiffs’ religious exercise that were
8 available to them. To begin, UCLA’s eventual decision to clear the
9 encampment proves that there *was* an obvious less restrictive
10 alternative: disbanding the illegal encampment swiftly after it arose.
11 Defendants have acknowledged as much: Defendant Block conceded to
12 Congress that UCLA “should have been prepared to immediately remove
13 the encampment ... when the safety of our community was put at risk.”
14 SUF ¶103.

15 At the very least, Defendants could have directed campus security
16 teams and the UCLA PD to protect Jewish students and faculty by
17 facilitating their access or escorting them through the area. SUF ¶¶63-
18 71. But instead, Defendants knowingly ceded the heart of campus to
19 activists who brazenly discriminated against Jewish students and
20 faculty. SUF ¶¶44-49, 57, 81, 104. Not only that, Defendants then
21 facilitated that exclusion through their own actions of installing
22 barricades and enforcing the encampment’s boundaries and exclusionary
23 policies, instead of protecting their Jewish students and faculty. SUF
24 ¶¶42, 59, 62-77.

25 In short, Defendants fail to satisfy strict scrutiny. Plaintiffs thus
26 succeed on their Free Exercise Clause claims.

1 **II. Injunctive relief is needed.**

2 Having demonstrated success on the merits of their free exercise
3 claims, all that remains is for Plaintiffs to show that they will suffer
4 irreparable harm without injunctive relief, that the balance of equities
5 tips in their favor, and that an injunction is in the public interest. *Walters*
6 *v. Reno*, 145 F.3d 1032, 1048 (9th Cir. 1998). As with the preliminary
7 injunction, each factor is met here.

8 ***Irreparable harm.*** “It is axiomatic that the loss of First Amendment
9 freedoms, for even minimal periods of time, unquestionably constitutes
10 irreparable injury.” *FCA*, 82 F.4th at 694 (cleaned up). That’s because
11 “[u]nlike monetary injuries, constitutional violations cannot be
12 adequately remedied through damages.” *Nelson v. Nat’l Aeronautics &*
13 *Space Admin.*, 530 F.3d 865, 882 (9th Cir. 2008), *rev’d and remanded on*
14 *other grounds*, 562 U.S. 134 (2011); *Cuviello v. City of Vallejo*, 944 F.3d
15 816, 834 (9th Cir. 2019). This factor is therefore satisfied.

16 ***Balance of equities and the public interest.*** When, as here, “the
17 party opposing injunctive relief is a government entity, the third and
18 fourth factors ... ‘merge.’” *FCA*, 82 F.4th at 695 (quoting *Nken v. Holder*,
19 556 U.S. 418, 435 (2009)); *see* Dkt.89 at 13; SUF ¶14. And here, both
20 factors favor granting a permanent injunction. “[I]t is always in the
21 public interest to prevent the violation of a party’s constitutional rights,”
22 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012), and Defendants
23 “cannot reasonably assert that [they are] harmed in any legally
24 cognizable sense by being enjoined from constitutional violations.” *Baird*
25 *v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023); *see also Rodriguez v.*
26

1 *Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (government “cannot suffer
2 harm from an injunction that merely ends an unlawful practice”).

3 **CONCLUSION**

4 This Court should grant Plaintiffs’ motion for partial summary
5 judgment and enter a permanent injunction.

1 Dated: February 28, 2025

2 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Undersigned counsel of record for Plaintiffs certifies that this brief contains 6,091 words, which complies with this Court's word limit for memoranda of points and authorities.

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